

REMARKS

Claims 23 – 25, 27 – 33, 39, 40, 42, and 43 are pending in the present application. Claims 23 and 27 are independent.

Claims 23, 40, and 43 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,944,704 to Guarracino et al. Applicant respectfully traverses.

Claim 23 is directed to a method of incorporating zeolite in a tampon for suppression or removal of menstrual odors. The method comprises, *inter alia*, distributing zeolite granules on a first non-woven web. The zeolite granules are the sole odor-absorbing materials incorporated into the tampon.

Guarracino is directed to an absorbent article including an odor control material. In one embodiment, the odor control material is a buffer incorporated into the absorbent article (col. 2, l. 22-26). In another embodiment, the odor control material is a borate salt in conjunction with an acid (col. 2, l. 35-40). The odor control material can also optionally include zeolite (col. 2, l. 63).

The Office Action acknowledges that Guarracino does not disclose zeolite as the sole odor-absorbing material, as required in claim 23, yet states that "the use of only zeolite as a suitable odor-control material for use in absorbent articles is commonly known," and that "omission of an element and its function is obvious." Applicant respectfully submits that it is only with the impermissible hindsight provided by the present application that such a conclusion is possible. The Office Action's statements find no support in Guarracino or any of the other references of record.

As noted above, Guarracino itself states that two odor control materials are required, namely a borate salt and an acid, in addition to the optional zeolite, to successfully suppress odors. One skilled in the art could not determine, based on

Guarracino, that zeolite alone could be used in the method of claim 23 to absorb odor. Furthermore, as evidenced by the discussion of the prior art discussed in Guarracino, it was not commonly known before the filing of the present application to use zeolite only as an odor absorbent material in absorbent articles, contrary to what is asserted in the Office Action. All of the prior art patents cited in col. 1, l. 28 – col. 2, l. 7 of Guarracino disclose multiple odor absorbent materials. Only one discloses zeolite at all (a synthetic variety), and that is only in conjunction with other materials such as activated carbon, carbonates, phosphates, sulfates, alkali metals, and acids (col. 1, l. 64 – col. 2, l. 2).

Section §2144.04(II), cited in the Office Action, holds that “Omission of an Element and Its Function Is Obvious if the Function of the Element Is Not Desired” (emphasis added). In the present application, the method of claim 23 performs the function of the borate salts and acids of Guarracino, namely to suppress or remove odors, so this function is desired, and §2144.04(II)(A) does not apply. In fact, the following MPEP section, namely §2144.04(II)(B), supports the patentability of claim 23. This section holds that “Omission of an Element with Retention of the Element’s Function Is an Indicia of Unobviousness” (emphasis added). Here, claim 23 removes the borate salts and acids of Guarracino, while still retaining the function of odor suppression and removal, with only the zeolite. Thus, the MPEP actually holds that claim 23 is patentable over Guarracino because of the removal of the borate salts and acids.

Accordingly, claim 23 is patentable over Guarracino, as are claims 40 and 43, which depend therefrom. Applicant respectfully requests that the rejection of claim 23, 40, and 43 be reconsidered and withdrawn.

Claims 24 and 25 have rejected under 35 U.S.C. §103(a) as being unpatentable over Guarracino in view of U.S. Patent No. 5,165,152 to Kramer et al. (hereinafter “Kramer”). Kramer fails to cure the deficiency of Guarracino to disclose or suggest the method of claim 23, and is not relied on by the Office Action to do so. Therefore, claims 24 and 25 are patentable over the cited combination of Guarracino and Kramer.

Applicant respectfully requests that the rejection of claims 24 and 25 be reconsidered and withdrawn.

Claims 27-29 and 42 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Guarracino in view of Kramer, and further in view of U.S. Patent No. 4,826,497 to Marcus et al. (hereinafter “Marcus”).

Independent claim 27 is directed to a method of incorporating zeolite in a tampon for suppression or removal of menstrual odors. The method comprises, *inter alia*, distributing zeolite granules on a first non-woven web. The zeolite granules are one or more natural zeolite granules, and are the sole odor-absorbing materials incorporated into the tampon.

As discussed above, Guarracino fails to disclose or suggest zeolite granules that are the sole odor-absorbing materials incorporated into a tampon, as required by claim 27. Kramer and Marcus fail to cure this deficiency, and are not relied on by the Office Action to do so. Therefore, claim 27 is patentable over Guarracino, Kramer, and Marcus under 35 U.S.C. 103(a). Claims 28 and 29 depend from claim 27, and are also patentable for at least the reasons provided above with respect to claim 27. Applicant respectfully requests that the rejection of claims 27-29 be reconsidered and withdrawn.

Claims 30-33 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Guarracino in view of Kramer and Marcus, and further in view United States Patent No. 6,030,608, to Hoyes et al., hereinafter “Hoyes.” Claim 39 has been rejected under 35 U.S.C. §103(a) as being unpatenable over Guarracino in view of Marcus.

Claims 30-33 depend from claim 27. Claim 39 depends from claim 23. Kramer, Marcus, and Hoyes all fail to cure the deficiency of Guarracino to disclose the methods of claims 23 and 27. Therefore, claims 30-33 are patentable over the cited combination of Guarracino, Kramer, Marcus, and Hoyes, for at least the reasons provided above with respect to claim 27. For at least the reasons provided above in support of the

patentability of claim 23, claim 39 is also patentable over Guerracino in view of Marcus. Applicant respectfully requests that the rejections of claims 30-33 and 39 be reconsidered and withdrawn.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

Respectfully submitted,



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